

# Defenders of the Black Hills

P. O. Box 2003, Rapid City, SD 57709

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Feb. 15, 2009

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Pierre, SD 57501-8501

Deborah White Plume  
PO Box 71  
Manderson, SD 57756-0071

## **Re: Response to Powertech's Petition to Intervene and Request for Denial**

Enclosed please find a copy of the Response to Powertech's Petition to Intervene and Request for Denial which original copy was submitted to the Department of Environment and Natural Resources, Eric Holm, Natural Resources Project Engineer, Pierre, SD. This copy shall be considered as service by mail upon you.

Sincerely,



Charmaine White Face, Coordinator  
and as an Individual

Enclosure: Response to Powertech's Petition to Intervene and Request for Denial

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT**

**IN THE MATTER OF PETITIONS TO NOMINATE LANDS FOR INCLUSION ON THE PRELIMINARY LIST OF SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS SUBMITTED BY CHARMAINE WHITE FACE AND THE DEFENDERS OF THE BLACK HILLS, DEBORAH WHITE PLUME, AND THE OGLALA SIOUX TRIBE.**

Response to Powertech's Petition to Intervene and Request for Denial

**COMES NOW**, Charmaine White Face and the Defenders of the Black Hills in response to a Petition to Intervene by Powertech (USA) Inc. and states as follows:

1. Powertech (USA) Inc. (Powertech) did submit a Notice of Intent to Operate and Request for Determination of Special, Exceptional, Critical, or Unique Lands to the Department of Environment and Natural Resources (DENR) according to ARSD Ch. 74:29:10.
2. Powertech (USA) did follow the provisions of 74:29:10:05. Publication of notice of intent to operate" which includes sub-section (5) "A statement indicating that any citizen, organization, or agency may nominate lands described in the notice of intent to operate for inclusion on the preliminary list of special, exceptional, critical, or unique lands by submitting a nominating petition to the department complying with the requirements of Section 74:29:10:16 within 60 days after the publication date of the notice."
3. In a letter dated Nov. 3, 2008 to Roberta Fivecoate, Natural Resources Project Engineer for DENR and received by the Minerals and Mining Program on Nov. 4, 2008, referencing Affidavits of Public Notification and signed by Mark Hollenbeck, Powertech's Project Engineer were two (2) original affidavits of publication. The notices were published in the Edgemont Herald Tribune on Oct. 1 & 8, 2008, and the Hot Springs Star on Oct. 29, 2008 meeting the requirements of 74:29:10:05.
4. Powertech's request to the Board of Minerals and Environment to dismiss the nominating petitions is a violation of 74:29:10:05 which allows "any citizen, organization, or agency" to nominate lands described in the notice of intent to operate.



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5. Powertech's request to the Board of Minerals and Environment to dismiss the nominating petitions must be denied and is a violation of 74:29:10:14 as the hearing before the Board, in which the burden of proof that lands must be listed as Special, Unique, Critical or Exceptional resides with the nominators, is scheduled for Feb. 19<sup>th</sup>, 2009, and has not been conducted to date.

Dated this 15<sup>th</sup> day of February, 2009.

By: Charmaine White Face  
Charmaine White Face, Coordinator  
Defenders of the Black Hills and  
as an Individual

### CERTIFICATE OF SERVICE

I, Charmaine White Face, do hereby certify that on the 15<sup>th</sup> of February, 2009, I caused the original 'Response to Powertech's Petition to Intervene and Request for Denial' to be filed with

Department of Environment and Natural Resources  
Minerals and Mining Program  
Attn: Eric Holm, Natural Resources Project Engineer  
PMB 2020, Joe Foss Building  
523 East Capitol  
Pierre, SD 57501-3182

and a full, true, and complete copy of said document to be served upon the following persons at their last known mailing addresses by depositing the same in the United States Mail in Rapid City, SD with first class postage affixed.

Max Main  
Attorney for Powertech  
618 State Street  
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